

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

5171 CAMPBELLS, LAND CO., INC. Bankruptcy No. 19-22715-CMB

Debtor, Chapter 11

5171 CAMPBELLS LAND CO., INC., Document No.

Movant,

vs.

**ASCENTIUM CAPITAL, LLC, IEMFS,
Ltd. d/b/a GSG FINANCIAL, HITACHI
CAPITAL AMERICA CORP., TRI STATE
EQUIPMENT CO., INC., WESBANCO
BANK, INC., STORE CAPITAL
ACQUISITIIONS, LLC, STORE
MASTER FUNDING XIII, LLC,
US FOOD, INC., VISION FINANCIAL
GROUP, INC., PENNSYLVANIA
DEPARTMENT OF REVENUE, THE
NEW YORK DEPARTMENT OF TAXATION,
THE OHIO DEPARTMENT OF TAXATION
AND THE INTERNAL REVENUE SERVICE,**

Respondents.

**EMERGENCY MOTION FOR SALE OF PERSONALTY FREE AND CLEAR OF
ALL LIENS, CLAIMS AND ENCUMBRANCES**

AND NOW, comes 5171 Campbells Land Co., Inc., the Debtor, by and through its Counsel, Robert O Lampl, John P. Lacher, David L. Fuchs, Ryan J. Cooney and Sy O. Lampl, and files this **EMERGENCY MOTION FOR SALE OF PERSONALTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**, as follows:

1. 5171 Campbells, Land Co., Inc. is the Debtor in the above Chapter 11 Case.

2. The Debtor commenced this Chapter 11 Case on July 8, 2019.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 157 and 11 U.S.C. Section 363.

4. Prior to the bankruptcy filing, the Debtor operated twenty-seven (27) Perkins Restaurants in Pennsylvania, New York and Ohio pursuant to certain License Agreements with Perkins & Marie Callender's, LLC ("PMC") and various real property and land leases with: STORE Capital Acquisitions, LLC; STORE Master Funding XIII, LLC; Perkins Holdings, LLC; Gerald R. Fry Co., Inc.; 3D Acquisitions, LP; Field Club Commons Associates, LLC; and Elmhurst Properties, Inc.

5. Prior to the bankruptcy filing, PMC terminated the Debtor's License Agreements.

6. Since the bankruptcy filing, the Debtor and PMC have entered into a Revised Stipulation and Consent Order and Amendments to said Revised Stipulation and Consent Order (collectively "the Perkins Stipulation"), which, *inter alia*, allows the Debtor to operate twenty-one (21) of its twenty-seven (27) restaurants as Perkins though August 31, 2019 pursuant to a temporary license.

See Doc. Nos. 28 & 106.

7. Additionally, the Perkins Stipulation allows the Debtor to operate its 6 other locations under a non-Perkins concept.

8. As of the filing of the within Motion, the Debtor is operating twenty-one (21) Perkins restaurants and two (2) non-Perkins restaurants. Thus, since

the bankruptcy filing, the Debtor has closed four (4) of its restaurants: Cranberry, PA; Canfield, OH; Canton, OH; and Grove City, PA.

THE SALE

9. On August 20, 2019, the Debtor agreed to sell a portion of its business assets to Amanda Bittinger (“Bittinger”) or an entity to be created by Bittinger for a purchase price of \$45,000.00.

10. Specifically, the Debtor agreed to sell all tangible personal property, machinery, equipment, tools, supplies, inventory, furniture and fixtures associated with the operation of its Ashland, OH restaurant (“the Personality”). An offer email from Ms. Bittinger is attached hereto as **Exhibit A**.

11. As noted in the offer email, the proposed sale of Personality is contingent upon Ms. Bittinger entering into a new lease agreement for the Ashland location with Store Master Funding XIII, LLC (“STORE”).

12. Additionally, the proposed sale of Personality is contingent upon Ms. Bittinger entering into a franchise agreement with PMC for the Ashland Location.

13. The Respondents which may hold liens, claims and encumbrances against the Personality are as follows:

- (a) The STORE Parties;
- (b) Ascentium Capital, LLC;
- (c) IEMFS, Ltd. d/b/a GSG Financial;
- (d) Hitachi Capital America Corp.;
- (e) Tri State Equipment Co., Inc.;

- (f) WesBanco Bank., Inc.;
- (g) Vision Financial Group, Inc.;
- (h) Pennsylvania Department of Revenue;
- (i) The New York Department of Taxation;
- (j) The Ohio Department of Taxation; and
- (k) The Internal Revenue Service.

14. The Personality is being sold as-is, where-is.

15. The Debtor believes, and therefore avers, that the proposed sale of the Personality is fair and reasonable and acceptance and approval of the same is in the best interest of this Estate.

**CAUSE EXISTS TO APPROVE THE SALE ON AN EMERGENCY BASIS AND
TO WAIVE COMPLIANCE WITH BANKRUPTCY RULES 6004(A), 6004(F)
6004(H), 2002(A)(2) AND LOCAL RULE 6004-1**

16. The Debtor submits that cause exists for the Court to approve this sale on August 29, 2019 and to waive any advertising or publication requirements set forth in the Bankruptcy Code or the Bankruptcy Rules, including Local Bankruptcy Rule 6004-1, with the exception of the requirement to upload the Notice of Sale to the EASI system.

17. The Debtor further submits that cause exists for shortening any notice period required by Bankruptcy rules 2002 and 6004.

18. As stated, the Debtor's temporary license under the Perkins Stipulation is set to expire on August 31, 2019.

19. Without a temporary license, the Debtor will be required to immediately suspend operations. Such a suspension will instantly diminish the value of the Debtor's assets. In fact, the Debtor does not expect that Ms. Bittinger would proceed with the sale if the Ashland location ceased operations prior to closing.

20. Without the proposed sale and the other sales that the Debtor is simultaneously proposing, the Debtor will not have sufficient funds to pay its last payroll, which under its normal operations, is fourteen (14) days in arrears. The Debtor also anticipates that it will lack sufficient funds to pay other administration such as professional fees and post-petition taxes.

21. Additionally, without the proposed sale, the employees of the Ashland location will be immediately terminated.

22. Further, without the proposed sale, the Debtor will most likely be forced to auction the Personality, which will result in minimal value to the estate.

23. Finally, the Debtor submits that there are no other qualified bidders for the Ashland location as Ms. Bittinger has already engaged in negotiations with STORE and PMC.

WHEREFORE, the Movant respectfully requests that this Honorable Court enter the proposed Order approving the sale of the Personality free and clear of all liens, claims and encumbrances.

Respectfully Submitted,

Date: August 22, 2019

/s/ Robert O Lampl
ROBERT O LAMPL
PA I.D. #19809
JOHN P. LACHER
PA I.D. #62297
DAVID L. FUCHS
PA I.D. #205694
RYAN J. COONEY
PA I.D. #319213
SY O. LAMPL
PA I.D. #324741
Counsel for the Debtor
223 Fourth Avenue, 4th Fl.
Pittsburgh, PA 15222
(412) 392-0330 (phone)
(412) 392-0335 (facsimile)
Email: rlampl@lampllaw.com

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CERTIFICATE OF SERVICE

Robert O Lampl, hereby certifies that on the 22nd day of August, 2019, a true and correct copy of the foregoing **EMERGENCY MOTION FOR SALE OF PERSONALTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES** was served upon the following (*via electronic service, facsimile or First Class U.S. Mail*):

Office of the United States Trustee
1001 Liberty Avenue, Suite 970
Pittsburgh, PA 15222

Date: August 22, 2019

/s/ Robert O Lampl

ROBERT O LAMPL

PA I.D. #19809

JOHN P. LACHER

PA I.D. #62297

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